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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES LANE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 64A03-0604-CR-167

APPEAL FROM THE PORTER SUPERIOR COURT

The Honorable David L. Chidester, Judge

Cause No. 64D01-0504-FD-2886

September 20, 2006

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, James Lane (Lane), appeals his conviction for battery against a law enforcement officer, a Class D felony, Ind. Code § 35-42-2-1; intimidation of a law enforcement officer, a Class D felony, I.C. § 35-45-2-1; and resisting arrest, I.C. § 35-44-3-3, a Class A misdemeanor.

We affirm.

ISSUES

Lane raises two issues on appeal, which we restate as follows:

- (1) Whether the State sufficiently rebutted his claim of self-defense; and
- (2) Whether the verdicts were inconsistent and irreconcilable.

FACTS AND PROCEDURAL HISTORY

At approximately 5 a.m. on April 9, 2005, the dispatch officer of the Portage Police Department received an emergency call from Francis Wehrowatz (Wehrowatz) who reported seeing a woman screaming into a cell phone and a man throwing the woman to the ground. In response to the emergency call, Corporal Dave Prickett (Corporal Prickett), Officer William Smith (Officer Smith), and Officer Troy Rose (Officer Rose) of the Portage Police Department were dispatched to the area of Dombly Road and Plaza Avenue in Portage, Indiana.

Officer Rose and Corporal Prickett arrived almost simultaneously and found the woman visibly distraught with her clothing disheveled. Officer Smith went in search of the male individual, later identified as Lane. Patrolling the vicinity in his police car, he noticed Lane's lower body sticking out of a parked houseboat with his upper body

underneath a tarp. As Officer Smith knew the owner of the houseboat and realized the owner had to be at work early in the morning, Officer Smith assumed Lane was sneaking into the boat. Officer Smith did not stop his car immediately for fear of slamming his K9, Fax, against his backseat cage.

By the time Officer Smith had parked his car and released Fax from his cage, Lane was standing in front of the houseboat. Officer Smith approached Lane and ordered him to the ground. Lane replied, "Fuck you, I didn't do anything." (Transcript p. 95). Again, Smith advised Lane to stop, warning him that he would deploy Fax if Lane failed to follow his instructions. Nevertheless, Lane jumped over a chain-link fence, and Officer Smith gave Fax an advisory command to be ready for deployment. Officer Smith gave Lane a final warning to get on the ground before he would release Fax. Lane yelled, "Go ahead and release that mother fucker, I'll break his neck and I'll kill you bitch." (Tr. p. 96). As Officer Smith approached the fence, Lane fled across the yard. Officer Smith helped Fax over the fence and ordered the K9 to apprehend Lane.

When Lane reached the fence on the other side of the yard, Fax hit him in the back, carrying both Lane and the K9 across the fence into another yard. Lane jumped back over the fence to avoid Fax. Seeing Officer Smith approach, Lane jumped back over the fence where he was cornered by Fax. Trying to avoid the K9, Lane jumped back over the fence, where he was caught by Officer Smith. Officer Smith attempted to radio for assistance while he and Lane wrestled across the yard. During the altercation, Lane repeatedly slammed Officer Smith against the house.

With Officer Smith's radio dispatches being unintelligible and consisting of Officer Smith and Lane screaming at each other as well as Fax barking, Corporal Prickett started to patrol the neighborhood in search of Officer Smith. When Corporal Prickett heard the altercation, he exited his vehicle and found Officer Smith and Lane fighting. Approaching them, Corporal Prickett heard Lane say, "I'm going to kill you motherfucker." (Tr. p. 45). Corporal Prickett first helped Fax over the fence and then jumped the fence himself. After Fax bit Lane in the back of the head, Officer Smith instructed Fax to stop the bite and attempted to apprehend Lane by his right arm. However, Lane swung his left arm around, trying to choke Fax, yelling, "I'm going to kill this motherfucker." (Tr. p. 102). At one point, while in a chokehold, Fax stopped growling, stopped wagging his tail, and his hind legs flay out, indicating a loss of muscle control. As Corporal Prickett realized that Officer Smith's warnings to Lane to release Fax were futile, he punched Lane repeatedly in the back of the head. Because Lane still refused to release Fax, Corporal Prickett hit Lane in the head with his handcuffs. The blow momentarily rendered Lane unconscious, allowing Fax¹ and Officer Smith to free themselves from Lane. Upon regaining consciousness, Lane continued to struggle but Officer Smith and other officers were finally able to subdue him and place him under arrest.

On April 11, 2005, the State filed an Information charging Lane with Count I, battery against Corporal Prickett, a Class D felony, I.C. § 35-42-2-1; Count II, battery

¹ Fax regained consciousness upon his release from Lane's chokehold. A check up revealed that Fax did not suffer any permanent damage during the encounter.

against Officer Smith, a Class D felony, I.C. § 35-42-2-1; Count III, battery against a K9, a Class D felony, I.C. § 35-46-3-11; Count IV, intimidation, a Class D felony, I.C. § 35-45-2-1; and Counts V and VI, resisting law enforcement, Class A misdemeanors, I.C. § 35-44-3-3. On August 3, 2005, the State amended the Information, adding a habitual felon enhancement. Likewise, on November 9, the State filed another amendment to the Information, amending Count III to read mistreatment of a law enforcement animal, a Class D felony, I.C. § 35-46-3-11. On November 21-22, 2005, a jury trial was held. At the close of the evidence, the jury returned a guilty verdict on Count II, battery against Officer Smith while resisting arrest, a Class D felony; Count IV, intimidation, a Class D felony; and one Count of resisting law enforcement, a Class A misdemeanor. The jury found Lane not guilty of the other charges. On December 22, 2005, during a sentencing hearing, Lane was sentenced to two years executed on Count II, two years executed on Count IV, and one year executed for the intimidation Count, with all sentences to run consecutively. Upon Lane's Motion to Correct Error, filed on January 3, 2006, the trial court reduced his executed sentence by ordering the sentence on the Class A misdemeanor to run concurrent to the other sentences.

Lane now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Claim of Self-Defense

Lane first contends that the State failed to sufficiently rebut his claim of self-defense beyond a reasonable doubt. "Self-defense is recognized as a valid justification for an otherwise criminal act." *Brown v. State*, 738 N.E.2d 271, 273 (Ind. 2000) (quoting

Miller v. State, 720 N.E.2d 696, 699 (Ind. 1999)). Self-defense is established if a defendant (1) was in a place where the defendant had a right to be, (2) did not provoke, instigate, or participate willingly in the violence, and (3) had a reasonable fear of death or great bodily harm. *Id.* Because the State carries the burden of disproving a defendant's claim of self-defense, once a defendant makes the claim, the State must disprove at least one of the elements beyond a reasonable doubt. *Id.* The State may meet its burden of proof by rebutting the evidence directly by affirmatively showing that the defendant did not act in self-defense or by simply relying upon the sufficiency of its evidence in chief. *Id.*

We review a challenge to the sufficiency of the evidence to rebut a claim of self-defense like we review any sufficiency of the evidence claim. *Id.* We will neither reweigh the evidence, nor assess the credibility of the witnesses. *Id.* We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

Here, Lane's main argument focuses on the provocation or instigation prong of the self-defense elements. He argues that because he was not involved in any criminal activity, Officer Smith was acting outside the scope of his lawful duty by restraining him and threatening to release the K9. We disagree.

First, we note that Officer Smith justifiably asked Lane to stop. As we have stated before, a police officer may briefly detain a person for investigatory purposes without a warrant or probable cause if, based upon specific and articulable facts together with

rational inferences from those facts, the official intrusion is reasonably warranted and the officer has a reasonable suspicion that criminal activity “may be afoot.” *Terry v. Ohio*, 392 U.S. 1, 21-22, 30, 88 S.Ct. 1868, 20 L.Ed2d 889 (1968). In the instant case, Wehrowatz testified that she notified the Portage Police department upon seeing a male throw a female on the ground. The record supports that on investigating this claim, Officer Smith came across Lane inside of a houseboat, approximately fifty yards from where the female was found. Knowing the owner of the houseboat and being in close vicinity of the place where the emergency call had originated, Officer Smith could reasonably suspect that criminal activity might be afoot. *See id.* Accordingly, by asking Lane to stop, Officer Smith conducted a legal *Terry* stop.

Furthermore, the record establishes that contrary to following Officer Smith’s instructions, Lane turned around, jumped a fence, and continued to walk away from Officer Smith. Prior to releasing Fax, Officer Smith again to no avail warned Lane to stop. Accordingly, it is clear that Lane provoked the force used by Officer Smith to stop him from fleeing by refusing to heed Officer Smith’s warnings. *See Brown*, 738 N.E.2d 273.

Moreover, regardless of the lawfulness of Officer Smith’s *Terry* stop, a private citizen may not use force or resist peaceful arrest by one he knows or has good reason to believe is an authorized officer performing his duties. *Alspach v. State*, 755 N.E.2d 209, 244 (Ind. Ct. App. 2001), *trans. denied*. Abolishing the common law rule permitting an individual to resist an unlawful arrest with reasonable force, our supreme court observed that a citizen today may readily find a remedy for an unwarranted intrusion by bringing a

civil action in the courts against the police officer and governmental unit that invaded his privacy. *Fields v. State*, 382 N.E.2d 972, 975-76 (Ind. 1978). Thus, the general rule has become that a person may not flee from a police officer that orders a person to stop regardless of the lawfulness of the officer's order. *State v. Howell*, 782 N.E.2d 1066, 1067 (Ind. Ct. App. 2003). However, we have not interpreted this rule as a blanket prohibition that criminalizes any conduct evincing resistance where the means used to affect an arrest are unlawful. *Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000), *reh'g denied*.

Despite Lane's arguments to the contrary, our review of the record reveals no unlawful means used by the officers to successfully arrest Lane. Pursuing a fleeing Lane, Officer Smith warned Lane twice before releasing Fax. Then, after cornering Lane, Officer Smith attempted to subdue him but was repeatedly slammed against a wall. Furthermore, when Fax was apparently rendered unconscious by Lane's chokehold, Corporal Prickett only used his handcuffs on Lane's head after all other options had failed.

Accordingly, based on the evidence before us, the jury could reasonably find that Lane provoked or instigated the force used in his arrest. *See Brown*, 738 N.E.2d at 273. Thus, we conclude that the State sufficiently rebutted Lane's claim of self-defense beyond a reasonable doubt.

II. *Inconsistent and Irreconcilable Verdicts*

Next, Lane contends that the jury's verdict of finding him guilty of battery against Officer Smith is inconsistent and irreconcilable with the jury's finding him not guilty of

battery against Corporal Prickett and mistreatment of a law enforcement animal. We review verdicts for consistency and will take corrective action if necessary. *Howard v. State*, 816 N.E.2d 948, 963 (Ind. Ct. App. 2004), *reh'g denied*. While perfectly logical verdicts are not demanded, only extremely contradictory and irreconcilable verdicts warrant corrective action by the court. *Id.* In practice, Indiana courts have routinely made an effort to ensure that opposing verdicts on different counts can be rationally reconciled. *Id.* In this regard, we stated that verdicts are inconsistent only where they cannot be explained by weight and credibility assigned to the evidence. *Id.* Thus, an acquittal on one count will not result in reversal of a conviction on a similar or related count because the former will generally have at least one element—legal or factual—not required for the latter. *Id.* In such an instance, the finder of fact will be presumed to have doubted the weight or credibility of the evidence presented in support of this distinguishing element. *Id.* Accordingly, verdicts that initially may seem inconsistent on some level are not legally inconsistent if they can be explained by the fact-finder's exercise of its power to assign the proper weight to and either accept or reject certain pieces of evidence. *Id.*

Here, we find that the jurors merely exercised their role as fact-finders by returning a not guilty verdict on the battery charge against Corporal Prickett. To prove its case beyond a reasonable doubt, the State was required to establish that Lane knowingly or intentionally touched Corporal Prickett in a rude, insolent or angry manner resulting in bodily injury. I.C. § 35-42-2-1. In its brief, the State now admits that the record is devoid of evidence that Lane ever intentionally touched Corporal Prickett. Thus, as the

jury exercised its power to attach proper weight to each of the elements of the charge, Lane's acquittal was not inconsistent with his conviction for battery on Officer Smith.

Similarly, the jury could have found that there was insufficient evidence to convict Lane of mistreatment of a law enforcement animal, a Class D felony. To convict Lane, the State was required to prove beyond a reasonable doubt that Lane knowingly or intentionally did strike, torment, injure, or otherwise mistreat Fax resulting in unconsciousness. *See* I.C. § 35-46-3-11. The record reflects that the only evidence that Lane rendered Fax unconscious is based on the officers' observations that Fax stopped growling, stopped wagging his tail, and lost muscle control. However, there is no direct evidence showing that Fax actually became unconscious. Mindful that it is within the jury's province to attach weight to the witnesses' testimonies and accept or reject certain pieces of evidence, we conclude that the jury's not guilty verdict is not inconsistent with Lane's conviction of battery against Officer Smith. Accordingly, we will not disturb Lane's convictions.

CONCLUSION

Based on the foregoing, we conclude that the State sufficiently rebutted Lane's claim of self-defense; and we find the jury's verdicts to be consistent and reconcilable.

Affirmed.

BAILEY, J., and MAY, J., concur.